

# LANGDON & EMISON

ATTORNEYS AT LAW

## What You Need to Know

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All-Terrain Vehicles

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## Dangerous ATV's Subject to Recalls, Fatal Injuries

Every year about 100,000 people are treated in emergency rooms across the country as a result of an all-terrain vehicle (ATV) or utility terrain vehicle (UTV) crash. The severity of these injuries is often increased by the failure of the manufacturers to sufficiently protect their occupants. ATVs often lack any occupant restraints or enclosed occupant area whatsoever, which combined with their susceptibility to rolling over in a crash, make them unreasonably dangerous.

While some UTVs now have an enclosed occupant area, these areas often lack doors or other structures sufficient to keep the occupants inside the area during a rollover. Instead, the only material between an occupant and the dangers outside of the vehicle are fabric in the form of mesh, straps or ropes, that allow the occupant to collide with the ground or other objects outside the vehicle.

Further, even when UTVs have occupant restraints, they often lack any safety checks to make sure that the restraints are actually worn during operation. And even when the UTVs incorporate such technology, either it or the restraints themselves fail to work properly under foreseeable circumstances.

For example, Polaris recently recalled over 10,000 of its 2020 Ranger UTVs because their safety belts malfunctioned under certain circumstances, endangering occupants. Overall, in evaluating a case involving a severe injury to or death of an ATV/UTV occupant, it is important to consider whether the defective design of the vehicle itself was a cause of the injuries the occupant sustained. Langdon & Emison continues to represent people who've been injured in all-terrain vehicles nationwide.

Even when these  
vehicles incorporate  
safety technology,  
the restraints often  
fail to work properly



## Maximum Recovery Earned on Behalf of Young Men Murdered in “Business Deal Gone Bad”

In July of 2019, Nick and Justin Diemel came to Missouri to collect a check from Garland “Joey” Nelson for cattle their business had provided him. The Diemel brothers never returned to their home in Wisconsin. Nelson was subsequently charged with their murders in a case that has made national headlines. Langdon and Emison was subsequently hired by the Diemel family to pursue claims for Nick and Justin’s wrongful deaths.

Numerous challenges exist in recovering for murder. Insurance does not cover intentional torts. Individuals who commit such heinous crimes usually lack sufficient resources to cover even a fraction of the harm done by their terrible actions.

Before ever filing a lawsuit, substantial research was performed on Nelson, which discovered that J4S Farm Enterprises, Inc, the cattle business Nelson was operating, was formed by his mother Tomme Feil in June of 2018. This was only three months after Nelson was released from federal prison on parole for the crimes on cattle fraud. Thus, it was through Feil and J4S that Nelson was able to return to the cattle business.

We used this information to pursue negligence claims against Feil and J4S for allowing someone as dangerous as Nelson to return to the cattle business. We also allege Feil and J4S acted along with Nelson in luring the Diemels to Missouri under the false pretense that they would be paid for their cattle.

Our efforts to expand the claims beyond intentional torts ultimately paid off in that we recovered the limits of a \$2,000,000 farm policy under which J4S and Feil were insured. While this amount does not make up for tremendous loss suffered by the Diemel family, it provided the family some additional financial security in the wake of this tragedy.



### Key to the Case

**Efforts to expand the claims beyond intentional torts paid off as we recovered the limits of a \$2,000,000 farm policy.**



# TIRE FAILURES & DEFECTS

NEARLY 1,000 PEOPLE DIE ANNUALLY DUE TO CAR WRECKS CAUSED BY DEFECTIVE TIRES.

## CAUSES OF TREAD SEPARATION

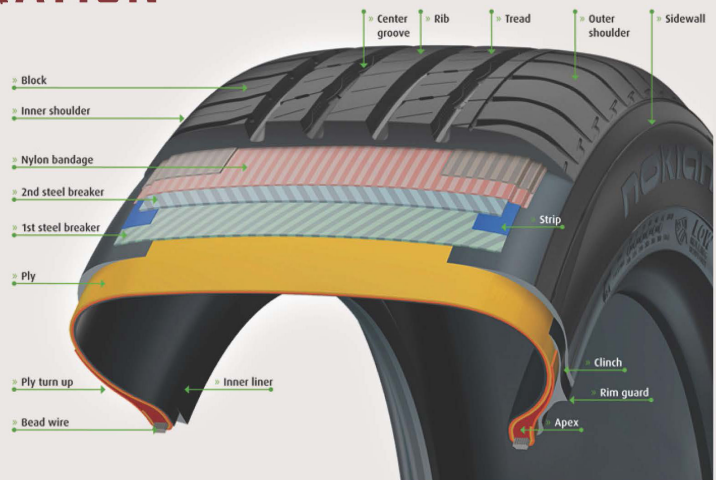
Tread belt separations are often reported as tire blowouts. When the tread and upper belt separate from the body of the tire, vehicle loss of control results, including rollovers that have resulted in serious injuries and fatalities.

**IMPROPER DESIGN** The tires oxidize because of oxygen permeation through the rubber surfaces, making the rubber brittle which causes separation between the layers.

**IMPROPER MANUFACTURING PRACTICES**

**IMPROPER SELECTION OF RUBBER MATERIALS** It is typically the type of rubber that is selected (one that doesn't resist oxygen permeation) that leads to failure.

**INADEQUATE QUALITY CONTROL MEASURES**



11,000

Estimated number of car accidents caused by tire failures each year

DATA SOURCE : NHSTA

## IMPROPER TIRE INSTALLATION

Failure to install tires in accordance with manufacturer and industry recommendations can lead to loss of control or premature failure of a tire, resulting in a crash.

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## How Sepsis Causes Nearly 270,000 Deaths Each Year

Each year, at least 1.7 million adults in America develop sepsis. It is the sixth principal reason for hospitalization in the United States and nearly 270,000 Americans die as a result. Sepsis accounts for 1 in every 3 patients who die in a hospital.

Even the patients that are lucky enough to survive can be left with devastating injuries, including organ damage, cognitive impairment, necrosis of limbs and amputations. It is a massive public health crisis that can attack young and old alike.

Sepsis is the body's out-of-control inflammatory response to an infection. If untreated, sepsis will lead to a critical reduction in tissue perfusion and acute organ failure. However, if recognized and treated early, sepsis has an 80% survival rate. In July 2015, the Center for Medicare and Medicaid Services published recommended sepsis treatment bundles to improve identification and treatment of sepsis.

However, according to data recently released by CMS on Hospital Compare, the national average of patients who receive appropriate care for severe sepsis and septic shock is 58%. That means nearly half of all Americans with severe sepsis and septic shock are not given the appropriate sepsis treatment as recommended by CMS. L&E has been litigating matters against hospitals and medical providers that fail to properly implement sepsis treatment procedures to quickly recognize and treat sepsis. Timing is critical in the treatment of this deadly condition. There is an 8% increase in mortality for each hour antibiotics are not administered following the onset of septic shock.

### Litigation Tip – Timing of Antibiotics

According to the Surviving Sepsis Campaign, broad spectrum antibiotics are to be administered within one hour of recognition of sepsis.

### Litigation Tip – How is Sepsis Diagnosed?

SIRS Criteria - Two of the below plus presumed infection:

- Temperature over 100.9;
- Systolic Blood Pressure under 90;
- Heart Rate over 90; or,
- Respiratory Rate over 20

There is no excuse for a patient that meets sepsis criteria to not receive immediate broad-spectrum antibiotics. Any delay in antibiotic administration may lead to devastating injuries or death; often this is a critical piece of your argument in a case against a defendant who failed to adequately care for the patient.





## **Court Denies Motions to Dismiss in Business Interruption Insurance Litigation, Allowing Firm's Suits to Proceed**

Along with Stueve Siegel Hanson, Miller Schirger, and Shaffer Lombardo Shurin, Langdon & Emison recently secured some of the first favorable rulings for business owners denied pandemic-related business interruption coverage by their insurers.

At the end of October, U.S. District Judge Stephen R. Bough denied Owners Insurance Co.'s motion to dismiss the consortium's suit. While in other cases judges have found that "physical loss or damage" must refer to physical alteration, the judge found in this ruling that the term can include loss of use without physical damage, and adopted that definition.

With that definition in mind, our legal team has successfully alleged that reduction in services resulting from the outbreak and government orders triggers the policy's business interruption clauses, allowing our cases to move forward. The judge also declined to strike class allegations from the suit, saying it's too early in the process for that determination to be made.

In June, the firms filed a lawsuit on behalf of K.C. Hopps, a locally owned Kansas City-based restaurant group against its insurer, The Cincinnati Insurance Company, for refusing to provide coverage for losses from COVID-19. Cincinnati responded by filing a motion to dismiss, arguing that K.C. Hopps was not entitled to coverage, but in August the court denied that motion. And in another success for these cases, the Judicial Panel on Multidistrict Litigation denied motions that would have consolidated hundreds of suits by policyholders whose insurers have denied their claims.

We are currently representing business owners against insurance companies in business interruption litigation in multiple jurisdictions. We are also litigating on behalf of higher education institutions similarly denied coverage of claims filed under their insurance policies.

L&E and partner firms have achieved the first positive results nationwide in Business Interruption Insurance litigation.



## Spotting Product Defects in Today's Trucks

When attorneys are retained on a trucking case, the focus of the preliminary investigation is typically directed to negligence of the driver or bad conduct of the trucking company in maintaining the truck, training the driver, hiring the driver, etc. This attention on the driver and the truck company is absolutely warranted.

However, other theories of liability are often overlooked completely or delayed until the evidence is gone. Semi-trucks are mammoth-sized vehicles with many moving parts that could be defective or malfunction causing a catastrophic accident.

Appropriate defendants to sue in products cases involving trucks may include the following: the manufacturer of the tractor trailer, the manufacturer of component parts on the truck or trailer, the trucking company or the owner of the trailer. Below are some of the product liability theories that should be considered in every case.

### Appropriate Defendants to Sue in Truck Products Cases

- Manufacturer of the tractor-trailer
- Manufacturer of the component parts
- Trucking company or owner of the trailer

### Defective Truck Tires

It is common for a collision to be caused "where the rubber meets the road," i.e. the tire. Tire failure in trucks can be the result of manufacturing defects or design defects. A tire failure can cause a horrific accident.

Failure of a steering axle tire can result in total loss of vehicle control, especially with older trucks that do not have power steering. If one of the tires on a dual tire drive axle or trailer axle fails, then the other tires will have to do more work, and support more weight, creating an untenable situation for the truck and truck driver. It is easy for a driver to lose control of a truck that has had a tire failure. Preservation of critical evidence is key and attorneys should immediately send a preservation of evidence letter to the motor carrier.

Since trucks are almost as wide as traffic lanes (generally no wider than 12 feet), there is a much greater chance of a lane violation with a big rig than with a light vehicle. This thinner margin for error makes front end alignment and design of the truck's axles even more important for trucks than it is for smaller vehicles.



Unfortunately, much of the information about relevant components inside the truck can be lost if the vehicle hits something and the front end is damaged. Any case involving a lane violation calls for a check of service records and driver reports for signs of directional control problems.

### **Fuel System Defects**

All major manufacturers place diesel fuel tanks outboard of the frame rails of the tractor. These are commonly referred to as “side-saddle” tanks. Over the past 20-25 years side saddle tanks have been phased out of passenger vehicles because of the recognized danger in hauling up to 40 gallons of highly flammable fuel in tanks that are not protected by frame rails. While it took auto manufacturers over 30 years to correct this horrible design, semi-truck manufacturers still locate the diesel fuel tanks in one of the most dangerous locations - unguarded and outside the frame rails of the tractor.



While diesel fuel is less volatile than gasoline, when it is vaporized – for example by piercing the fuel tanks in a side-swipe collision – diesel fuel can easily ignite and cause catastrophic burn injuries or death. In addition to the dangerous location of the fuel tanks, often the tanks will have components added that have the potential to puncture the tank in a collision. Most side saddle tanks on tractors are constructed of aluminum and are very susceptible to rupturing in a collision.

Additional fuel system defects may include fuel line failure, fuel filler pipe failures or the failure to have a safety valve in the tank to prevent fuel from escaping. A fire cause and origin expert should be retained to identify the source of the fire and flammable substance anytime there is a fire in a semi-truck collision which injures or kills someone. In addition, a fuel system design expert can identify any defects leading to the failure and breach of the fuel system.

### **Underride Guards**

One design flaw that can be potentially fatal is the truck’s “underride guard.” For many years, federal law has required semi-truck trailers to be fitted with “underride guards” to prevent underride crashes.

However, studies analyzing both real world collisions and crash tests indicate federal minimum requirements for underride guards are not sufficient to protect motorists. Underride guards that comply with the minimum federal standards often fail, even at low speeds.

Trucking accidents often are catastrophic to occupants because of the tremendous size and speed of the semi-trucks, but underride crashes are particularly lethal. More than 400 drivers and passengers are killed each year due to underride crashes. Around 5,000 additional people are

injured. As a car collides with the rear or side of the semi-truck’s trailer, the trailer can act like a guillotine as the car submerges underneath the trailer. The force of the impact combined with the weight of the semi-truck trailer can crush or shear off the car’s roof.



Attorneys must investigate both design and manufacturing defects in the underride guard itself. Testing should be performed to determine the strength and effectiveness of the underride guard as designed. A thorough metallurgical analysis should also be performed to determine manufacturing defects that may include inferior metal or poor welds.

*(Continued p. 10)*

# MASS TORTS UPDATE

## Popular Heartburn Drug Zantac Linked to Cancer

The widely used heartburn drug Zantac, also known as ranitidine, has been reported to contain unsafe, elevated levels of a chemical known to cause cancer. We are reviewing cases for individuals who have developed gastrointestinal or bladder cancer after regular use of brand-name or generic Zantac for at least one year.

**Hernia Mesh.** Several brands of hernia mesh products have been associated with a high failure rate. We are actively litigating hernia mesh cases and continue to review new cases in which the claimant had hernia repair surgery and later required revision surgery.

**3M Bair Hugger Warming Blanket.** Langdon & Emison has obtained a January 6, 2022 trial date for one of its Missouri state-court filed cases against 3M and others that was recently remanded. This case is one of the only active Bair Hugger cases in the country pending the MDL Leadership appeal of the entry of summary judgment in the MDL. The briefing on the appeal is scheduled to be completed in September of this year with oral argument expected by Spring 2021. Our firm continues to review potential Bair Hugger claims for patients who suffered a serious deep joint infection within a year of a joint replacement surgery.

If you have questions about whether your mass tort case may qualify, contact us today at 800-397-4910 or [lelaw.com](http://lelaw.com).



## Tricia Campbell Appointed to MDL Leadership



*Tricia Campbell*

The Honorable Stephen R. Bough appointed L&E Attorney Tricia Campbell to serve on the Plaintiffs' Executive Committee in MDL No. 2936 re: Smitty's/Cam2 303 Tractor Hydraulic Fluid Marketing, Sales Practices and Products Liability Litigation consolidated in the Western District of Missouri.

In that MDL, Plaintiffs allege that Defendants (1) deceptively marketed the products as meeting John Deere 303 specifications that allegedly became obsolete in the 1970s when an essential ingredient was banned from use; (2) misrepresented the products' anti-wear and protective benefits; and (3) used inferior ingredients such as used oils and diluted additives that caused damage to Plaintiffs' equipment. All actions further allege that Plaintiffs suffered economic losses from buying an allegedly worthless product or a product worth less than Plaintiffs paid.





## Popular Trucks and SUVs Fail Frontal Collision Tests

Newer model Ford Explorer and Jeep Grand Cherokees received overall “poor” ratings in frontal crash tests performed by the Insurance Institute for Highway Safety (IIHS). This is the worst rating given by the IIHS for vehicle crash testing. In particular, the Explorer and Grand Cherokee failed to protect the occupants in the small off-set frontal collision test, which simulates a vehicle’s front corner impacting a fixed object or vehicle at 40 mph.

The Explorer and Grand Cherokee models failed to protect occupants in recent small off-set frontal collision tests.

In the Grand Cherokee, there was an intrusion of up to 10 inches at the lower door hinge pillar. The passenger crash test dummy’s head hit the dashboard through the front airbag, showing inadequacies with the deployment of the frontal impact bag.

Worse yet, the side curtain airbag failed to deploy, and the passenger door opened allowing the dummy’s head to move outside the vehicle during rebound. Data from the dummy indicates lower extreme and head injuries were likely to occur in the accident.

The Explorer had even worse intrusion into the occupant compartment. There was an intrusion of up to 15 inches at the lower door hinge pillar and 13 inches at the upper door hinge pillar and dashboard. The passenger door frame intruded six inches toward the dummy. According to the IIHS, there would be a high likelihood of injuries to the right hip in a real-world collision of the same severity, as well as a possibility of left lower leg injuries.

**5,035**  
Number of deaths  
in U.S. wrecks  
involving SUV’s

• Data from IIHS, 2018

“In those SUVs, the airbags, safety belts and structure showed serious deficiencies,” says IIHS Chief Research Officer David Zuby. “A front-seat passenger would be at risk of injuries to the head, hip or leg in a right-side small overlap front crash.”

# Product Defects in Trucks, (cont'd from p. 7)

## Escape Worthiness/Crashworthiness Claims

A defective semi-truck is not only dangerous to occupants of cars, but also to the truck driver. One defect specific to truck drivers are tractors that do not have an emergency exit to allow a truck driver to escape if the tractor is deformed such that the driver cannot exit via one of the doors.

Typically the emergency exits are located in the sleeper cab area. If there is a fire in a truck crash, the driver must have an alternative emergency exit available if the doors of the truck are jammed.

Tractor cabs are usually constructed from light-weight aluminum and are prone to crush and deform in an accident. They usually do not have air bags (Volvo tractors are one exception). There are no Federal safety standards (FMVSS) for tractor cabs pertaining to occupant protection in a collision. Many truck drivers have been severely injured or killed as a result of roof crush, lack of an air bag, or failure to have an emergency exit.

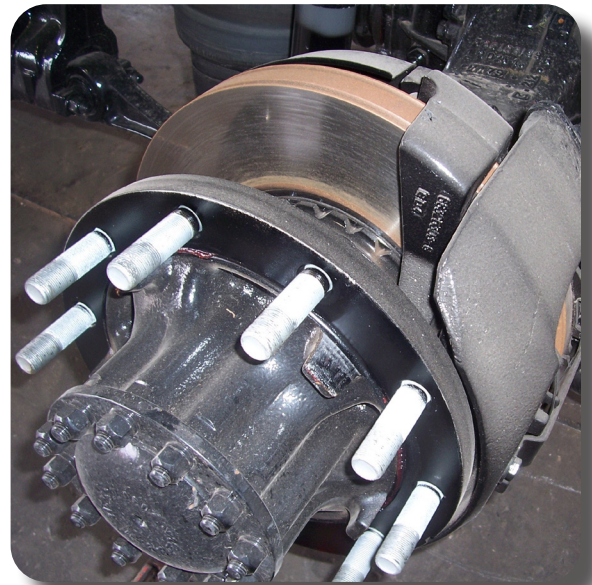
Truck-driving and engineering experts may need to identify alternative designs and/or test various systems.

## Brake Defects

One of the most common claims in truck cases involve the brakes. Heavy trucks use air brakes which are complicated, hard to maintain and less effective than the hydraulic brake systems used on light vehicles.

Truck brake systems include an engine-mounted air compressor, several tanks, numerous lines and valves, and the actuating units at each wheel. Most importantly, the "S" cam drum brakes, now in almost universal use, have adjustment requirements that are critical for optimal brake operation.

Brake fade — a heat-related problem — is caused by a buildup of heat in the braking surfaces and the subsequent changes and reactions in the brake system components. This condition can be lessened by appropriate equipment and materials design and selection, as well as good cooling. Brake fade in trucks usually occurs when going down a long, steep hill.



Truck-driving and engineering experts will be necessary to explain the braking system to the jury and to identify defects within the system. Such experts may need to identify alternative designs and/or test various systems to determine the effectiveness of alternative designs.

Studies analyzing both real world collisions and crash tests indicate federal minimum requirements for underride guards are not sufficient to protect motorists.

## Conclusion

Loaded semi-trucks commonly weigh up to 80,000 pounds. When these enormous vehicles are traveling at highway speeds, any defect in a tire, brake or other component can cause loss of control of the semi-truck. During a collision of these large vehicles unguarded or poorly designed fuel systems are prone to rupture. Attorneys should always investigate and evaluate truck crashes for potential product liability claims.



## News and Notes



Nicole Smith

### Associate Nicole Smith Receives “Up and Coming Lawyer” Award

Langdon & Emison attorney Nicole Smith was named an “Up and Coming Lawyer” by Missouri Lawyers Weekly this fall. The award seeks to recognize those attorneys from across the state who have stood out as exemplary in their career, while still not reaching their 40th birthday. Nicole has been an integral part of the firm’s mass torts division since 2018, and she has played a key role in the firm’s recent successes in GM product defect litigation. Nicole is a proud alum of the University of Kansas School of Law, and practices in the firm’s Lexington, Mo., office.



Kent Emison

### Kent Emison Leads TrialGuides Webinar on Auto Product Defects Trials

Partner Kent Emison led a free webinar streamed by *TrialGuides* on July 23. The program featured Kent’s analysis on his result in the *Tyndall v. Ford* case, featuring video footage from the 6-week jury trial itself, provided by Courtroom View Network. The program was a rare insight into a product liability trial, and was hosted by Nicholas Rowley as part of *Trial by Human’s* webinar series dedicated to precedential and/or significant trials in civil litigation.



Brett Emison

### Brett Emison Concludes Year as President of State Trial Lawyer Association, Receives AAJ Award

Partner Brett Emison wrapped up his year serving as president of the Missouri Association of Trial Attorneys. The state trial lawyer association was able to successfully represent citizens’ access to civil courtrooms by educating the public and legislators about the damaging effects of potential “tort reform” bills, and was also able to provide a number of educational opportunities for members of the bar.

Also this summer, Brett received the Distinguished Service Award from the American Association for Justice during its Annual Meeting. This award praises and recognizes members of the Board of Governors who have gone above and beyond to carry out the AAJ’s mission, and have been of particular special assistance to the AAJ President. Brett has been active in the AAJ’s communications and education efforts on access to justice.

# Five L&E Partners Named to Best Lawyers in America for Plaintiff's Personal Injury Litigation

Langdon & Emison attorney David Brose will join Partners Brett Emison, Kent Emison, Bob Langdon and Michael Manners as honorees in the 2021 edition of *Best Lawyers in America*, which publishes at the end of this year. David joins the other four in the category of plaintiff's personal injury litigation.

Kent Emison will be named a "Lawyer of the Year" for plaintiff's personal injury litigation, while Bob Langdon will receive the same honor within the category of railroad law for plaintiffs. Based on our representations of personal injury clients nationwide, our attorneys have been recognized as a "Tier One" plaintiff's firm by *Best Lawyers*.



Meanwhile, Langdon & Emison attorneys Brennan Delaney, Mark Emison and Michael Serra will also be honored in the forthcoming 2021 edition, as part of the "Ones to Watch" category. The "Ones to Watch" list recognizes the top young lawyers nationwide. These three young attorneys will be included in the personal injury litigation category.

## Nearly \$1 billion in verdicts and settlements

For over 30 years, we have specialized in representing personal injury clients, earning almost \$1 billion in accumulated verdicts and settlements. We are always interested in developing co-counsel arrangements with attorneys from all over the U.S., so if you have a potential case that you would like to discuss, we would love to hear from you at the contact info below.



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& EMISON  
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